IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2180 OF 1989

M/s.Tirupati Films .. Plaintiffs.

Versus

M/s.Diana Film Distributors & Ors. .. Defendants.

Ms.Mrudula Kadam i/b.N.V.Vimadalal for plaintiffs.

None for defendants.

CORAM : A.M.KHANWILKAR, J.

DATE : 29th September, 2007.

P.C.:

1. None appears for the Defendants though served. No written statement has been filed on behalf of Defendants. The matter has been placed today to proceed against the Defendant No.1 as undefended suit. It is not in dispute that the suit is already dismissed as against Defendant Nos.2 and 3. In other words, the present suit proceeds only against Defendant No.1 as undefended suit.

2. In substance, the case of the plaintiffs is that

they are carrying on business at Mumbai as distributors of motion pictures in the territory of Mumbai Circuit as known in the film trade. The 1st Defendant is also carrying on business interalia as distributor of the motion pictures at Mumbai. Similarly, the Defendant No.2 is also engaged in the same business as Defendant No.1. The Defendant No.3 is carrying on business as producer of motion pictures at Mumbai. By an Agreement dated 18th October, 1982, executed by the 3rd Defendant in favour of the 1st Defendant, the 3rd Defendant granted the distribution, exhibition and exploitation rights of the motion picture "HAADSAA" (Hindi Film) for the territory of Mumbai Circuit. By subsequent Agreement dated 25th October, 1982, executed between the 1st, 2nd and the 3rd Defendant, the terms of the Agreement dated 18th October, 1982 were modified. Under the modified Agreement, the Defendants agreed to distribute, exhibit and exploit the said film "HAADSAA" on joint venture basis. The Defendants in or about July, 1983, approached the plaintiffs with a request to distribute, exhibit and exploit the said film in the territory of Mumbai Circuit as sub-agents and / or sub-distributors of the Defendants. That offer was accepted by the plaintiffs. Thereupon, the parties entered into an Agreement dated 20th July, 1983, executed between the 1st Defendant as distributor, the

plaintiffs as sub-distributors, the 2nd Defendant as 2nd confirming party and the 3rd Defendant as 1st confirming party on the terms and conditions referred to therein. As per the said Agreement, the plaintiffs paid a sum of Rs.8.00 lacs to the distributors as refundable advance. As per the terms of clause 6 of the Agreement, the said amount of Rs.8.00 lacs was agreed to be advanced by the sub-distributor (plaintiffs). The amount of actual cost of quota prints and the publicity expenses, not exceeding Rs.6.00 lacs was agreed to be refundable advance to be paid by the distributor to the sub-distributor. The Agreement also provides that on failure to refund the refundable deposit amount, the plaintiffs would be entitled to 18% interest per annum. As per the clause 10 of the Agreement, the plaintiffs are entitled for 20% commission receivable as sub-distributor’s commission upon the total income and realisation of the said picture. There are other terms referred to in the Agreement. According to the plaintiffs, the said film was expedited from 1983. After the Agreement in favour of the plaintiffs, the business of the said film up to the month of September, 1984 was in the sum of Rs.8,26,689.65. The business from October, 1984 to September, 1985 was in the sum of Rs.1,31,289.99 and for the period from October, 1985 to September 1986 was in the sum of Rs.31,445.53.

The business for subsequent period for October, 1986 to September, 1987 was in the sum of Rs.31,140.21 and from October, 1987 to September, 1988 was in the sum of Rs.8,898.77 and for the period of October 1988 to February, 1989 was in the sum of Rs.3,251.00. According to the plaintiffs, the plaintiffs are not only entitled for return of advance amount of Rs.8.00 lacs given as refundable security deposit but also for interest thereon at the agreed rate @18% per annum. The plaintiffs were also entitled for the payment of cost of film in the sum of Rs.6,85,857.37 and publicity expenses in the sum of Rs.6.00 lacs. According to the plaintiffs, the principal amount receivable by plaintiffs is Rs.20,85,851.37 towards reimbursement of refundable security deposit and cost of prints and publicity expenses. In addition, the plaintiffs are entitled to commission @20% on the total business done in respect of the said film for the relevant periods. According to the plaintiffs as on 20th February, 1989, the plaintiffs became entitled to a sum of Rs.20,12,961.37. The computation of such amount has been given in the particulars of plaintiffs claim.

3. The plaintiffs in addition have filed affidavit of evidence in lieu of examination in chief sworn by Mr.Harish Bhatia which reiterates the claim of the

plaintiffs. The affidavit gives graphic description of how the defendants were liable to pay the suit claim amount in the sum of Rs.20,12,961.37 as per Clause 6 of the Agreement dated 20th July, 1983 and also entitled for further interest during the pendency of the suit. The plaintiffs have relied on compilation of original documents which consist of following documents :-

1. Copy of Minutes of Order dated 13-11-1987 in Arbitration Petition No.31 of 1987.

2. Copy of Minutes of Order dated 13-11-1987 in Arbitration Petition No.32 of 1987.

3. Copy of the Agreement dated 20-07-1983, executed between the Defendant Nos.1 to 3 and the plaintiffs.

4. Photo copy of original Agreement dated 20-07-1983 between the Defendant Nos.1 to 3 and the plaintiffs.

4. It is stated in affidavit by the plaintiffs that the original Agreement is with the Defendant No.1 for which reason, the plaintiffs are in a position to produce

only photo copy of the said document. For the reason mentioned by the plaintiffs, the plaintiffs are permitted to rely on this document as secondary evidence. The plaintiffs are also relying on a letter dated 26th September, 1984, addressed by the plaintiffs to the Defendants, letters dated 26th September, 1984, 10th October, 1984, 9th November, 1984 and letter dated 17th November, 1984 sent by the Defendant No.3 to the plaintiffs. Reliance is also placed on a letter dated 19th November, 1984 of the plaintiffs sent to Secretary, IMPDA.

5. From the documents which are placed on record, the plaintiffs have established their case made out in the plaint about acknowledging the liability of the defendants to pay the suit claim amount to the plaintiffs. Even with regard to the agreed interest claimed by the plaintiffs is on the basis of Clause 6 of the Agreement between the parties. Besides, the interest @18% per annum is justified in view of the fact that the transaction between the parties was a commercial transaction.

6. Suffice it to observe that the plaintiffs have not only established their case on the basis of the pleadings and evidence of plaintiffs' witness as well as the

documents for recovery of sum of Rs.20,12,961.37 from the defendants, who are jointly and severally liable to pay the amount but also established the fact that the plaintiffs are entitled for the interest @18% per annum on the principal amount referred to above till the realisation thereof.

7. As mentioned earlier, the defendants have not chosen to appear inspite of service, no written statement has been filed on behalf of the defendants. The case made out by the plaintiffs has gone unchallenged. In the circumstances, I have no hesitation in decreeing the suit in favour of the plaintiffs in terms of prayer clause (a) in exercise of powers under Order 8 Rule 10 of the Code of Civil Procedure.

8. Counsel for the plaintiffs has invited my attention to the fact that the Defendant No.3 has paid a sum of Rs.75,000/- which is adjustable towards the suit claim amount. That payment is made on 8th November, 2005, during the pendency of the suit by the defendant No.3 to the plaintiffs. In that sense, the Defendant No.1 will be entitled for adjustment for a sum of Rs.75,000/- against the decretal amount.

9. Accordingly, suit is decreed in terms of prayer clause (a) against Defendant No.1 only with costs.

10. Prayer clause (a) in the suit reads thus :-

> "a) That the Defendants be jointly and severally or such of them as this Hon’ble Court may hold liable be ordered and decreed to pay to the Plaintiffs the said amount of Rs.20,12,961.37 in accordance with the particulars of claim Exhibit-"F" hereto together with further interest on Rs.20,12,961.37 at the rate of 18% per annum from the date of the suit till payment or realisation."

11. Decree be drawn on the above basis only against the Defendant No.1.

(A.M.Khanwilkar, J.)